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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 JERRIS B.,

9 Plaintiff,

10 v.

11 COMMISSIONER OF SOCIAL SECURITY,

12 Defendant.

CASE NO. C19-5293-BAT

**ORDER AFFIRMING THE  
COMMISSIONER**

13 Plaintiff seeks review of the denial of her applications for Supplemental Security Income  
14 and Disability Insurance Benefits. She contends the ALJ erred in discounting certain medical  
15 opinions, and discounting her testimony and the lay statements.<sup>1</sup> Dkt. 14 at 1. As discussed  
16 below, the Court **AFFIRMS** the Commissioner's final decision and **DISMISSES** the case with  
17 prejudice.

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20 <sup>1</sup> Plaintiff also argues that the errors listed here led to errors in the residual functional capacity  
21 ("RFC") finding, which created error in the step-four finding. Dkt. 14 at 14. This assignment of  
22 error is both derivative and also overlooks the Appeals Council's decision, which vacated the  
23 ALJ's step-four finding and found Plaintiff unable to perform her past work, and entered new  
step-five findings based on vocational testimony offered in response to an alternate hypothetical  
given at the administrative hearing. Tr. 5-6. The Commissioner's briefing defends the ALJ's  
decision rather than the operative Appeals Council's decision. Dkt. 17 at 16-18. In any event,  
because Plaintiff's assignment of error in the RFC and step-four findings is entirely enveloped in  
the assignments of error listed above, the Court need not address them separately.

## BACKGROUND

Plaintiff is currently 52 years old, has a high school diploma and some college education, and has worked as a carpenter, cook, and deli worker. Tr. 311, 550. In June 2015, she applied for benefits, alleging disability as of November 8, 2013. Tr. 483-95. Her applications were denied initially and on reconsideration. Tr. 410-13, 416-21. The ALJ conducted a hearing on May 3, 2017 (Tr. 306-45), and subsequently found Plaintiff not disabled. Tr. 234-50.

The Appeals Council granted Plaintiff's request for review, and its February 15, 2019 decision finding Plaintiff not disabled is the Commissioner's final decision. Tr. 1-9.

## THE APPEALS COUNCIL'S DECISION

Utilizing the five-step disability evaluation process,<sup>2</sup> the Appeals Council found:

**Step one:** Plaintiff had not engaged in substantial gainful activity since November 8, 2013.

**Step two:** Plaintiff's calcific aortic stenosis of the bicuspid valve, aortic insufficiency, and aortic regurgitation post-valve replacement; neurocognitive impairment; degenerative disc disease; and depression are severe impairments.

**Step three:** These impairments did not meet or equal the requirements of a listed impairment.<sup>3</sup>

**Residual Functional Capacity:** Plaintiff can perform light work with the following limitations: she can occasionally climb, balance, stoop, kneel, crouch and crawl. She should avoid concentrated exposure to extreme temperatures, pulmonary irritants, and hazards. She can frequently handle and finger bilaterally. She should be limited to simple, routine tasks consistent with unskilled work. She is limited to low-stress work, "defined as work requiring work decisions or changes." She may have frequent [contact] with co[-]workers and occasional, superficial interaction with the public.

**Step four:** Plaintiff cannot perform her past work.

**Step five:** As there are jobs that exist in significant numbers in the national economy that Plaintiff can perform, she is not disabled.

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<sup>2</sup> 20 C.F.R. §§ 404.1520, 416.920.

<sup>3</sup> 20 C.F.R. Part 404, Subpart P, Appendix 1.

Tr. 1-9.

## DISCUSSION

### A. Medical opinions

The Appeals Council adopted the ALJ's finding and conclusions regarding the medical opinion evidence. Tr. 5. Plaintiff challenges the ALJ's assessment of three medical opinions, which the Court will address in turn.

#### 1. Philip Berger, D.O.

Dr. Berger, Plaintiff's treating cardiologist, wrote a letter in September 2015, which reads:

I am the attending cardiologist for [Plaintiff]. She is struggling with neurocognitive dysfunction. The question is whether this has taken its origin from her recent aortic valve replacement and subsequent encephalopathy issues. Her neurologic workup is ongoing.

From a cardiologic standpoint she has made a good recovery from her aortic valve replacement but her neurocognitive issues render her incapacitated. Her formalized neurocognitive workup is being undertaken by Chike L Linton, MD.

Tr. 881. The ALJ gave limited weight to this opinion, finding it inconsistent with (1) the treatment records, which show "essentially unremarkable" neurological examinations; (2) mental status examinations "within normal limits"; and (3) inconsistent with the State agency psychological opinion. Tr. 246.

Because, as noted by the ALJ, Dr. Berger's opinion is inconsistent with the State agency opinion, the ALJ was required to provide specific and legitimate reason to discount it. *See Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1996). Plaintiff acknowledges that the record does indicate that, as the ALJ noted, she had unremarkable neurological examinations and normal mental status examinations, but Plaintiff emphasizes that her treating providers nonetheless

1 accepted her subjective description of her neurocognitive problems, and thus the ALJ should not  
2 have expressed a view contrary to the treating doctors'. Dkt. 14 at 7-8.

3 Plaintiff does not fairly summarize the entirety of the record, when arguing that her  
4 treating doctors endorsed her self-reported limitations. It is true that Dr. Linton documented  
5 Plaintiff's complaints of cognitive problems despite her normal test results. *See* Tr. 805, 810.  
6 Dr. Linton did not stop there, however: Plaintiff was referred for further evaluation to attempt to  
7 determine the cause of Plaintiff's symptoms as well as their severity. Tr. 810. Plaintiff  
8 underwent extensive neurocognitive evaluation in November 2016 that revealed largely normal  
9 findings, and the examiner wrote that he was

10 particularly struck by the discrepancy between [Plaintiff's] subjective  
11 experience/complaints and the results of her objective testing and would wonder  
12 about the presence of nonneurological factors in accounting for this. Regardless,  
13 results of today's evaluation are not overly concerning for a significant  
anoxic/hypoxic injury, emerging neurodegenerative condition or severe  
impairments in cognition that would contraindicate ongoing and successful  
function.

14 Tr. 1008-12. In light of the record as a whole, therefore, Plaintiff's argument is not persuasive:  
15 Dr. Berger's opinion is indeed contradicted by the record (as found by the ALJ) and the record  
16 does not indicate that Plaintiff's providers wholly credited her symptoms despite normal  
17 objective findings. Plaintiff has not shown the ALJ's rationale for discounting Dr. Berger's  
18 opinion is erroneous and the Court accordingly affirms the Commissioner's determination.

19 **2. James Parker, M.D.**

20 Dr. Parker examined Plaintiff in September 2015 and wrote a narrative report describing  
21 her symptoms and limitations. Tr. 871-74. The ALJ summarized Dr. Parker's findings and  
22 explained he gave Dr. Parker's conclusions only partial weight because to the extent the opinion  
23 can be interpreted to indicate limitations more severe than moderate, it is inconsistent with Dr.

1 Parker's largely normal mental status examination as well as Plaintiff's appropriate interaction  
2 with Dr. Parker. Tr. 245.

3 The ALJ noted Dr. Parker's opinion is contradicted by the State agency opinion; the  
4 ALJ's reasons to discount Dr. Parker's opinion therefore must be specific and legitimate.  
5 Plaintiff argues the ALJ's rationale does not meet this standard because Dr. Parker's findings do  
6 indeed support his conclusions, specifically regarding Plaintiff's slow pace, depressed mood, flat  
7 affect, and memory deficits. Dkt. 14 at 10.

8 Plaintiff's argument fails. Dr. Parker noted Plaintiff's depressed mood and flat affect  
9 during his examination (Tr. 873), but those findings do not pertain to any particular functional  
10 limitations and Dr. Parker did not cite them as support for his conclusions. Dr. Parker did cite  
11 Plaintiff's slow pace and memory deficits to support his conclusions (Tr. 874), but, as found by  
12 the State agency opinion, the extent of the pace and memory deficits documented by Dr. Parker  
13 do not support the severe limitations found by Dr. Parker. *See, e.g.*, Tr. 385-86, 388-89. The  
14 ALJ also noted Dr. Parker found Plaintiff could maintain concentration, displayed a cooperative  
15 attitude with no unusual motor activity, had linear stream of mental activity and normal  
16 orientation. Tr. 244.

17 The ALJ did not err in relying on the State agency consultant's interpretation of Dr.  
18 Parker's opinion in the context of other evidence, because the State agency opinion was  
19 consistent with other evidence in the record, namely the November 2016 neurocognitive  
20 evaluation described above. *See Tonapetyan v. Halter*, 242 F.3d 1144, 1148-49 (9th Cir. 2001)  
21 ("Although the contrary opinion of a non-examining medical expert does not alone constitute a  
22 specific, legitimate reason for rejecting a treating or examining physician's opinion, it may  
23 constitute substantial evidence when it is consistent with other independent evidence in the

1 record.”). Here the ALJ specifically found that the agency opinion was consistent with the  
2 medical evidence. Tr. 245. Because Plaintiff has failed to show error in the ALJ’s reasoning  
3 with respect to Dr. Parker’s opinion, this portion of the ALJ’s decision is affirmed.

4 **3. Terilee Wingate, Ph.D.**

5 In November 2015, Dr. Wingate examined Plaintiff and wrote a narrative report  
6 describing her symptoms and limitations. Tr. 959-64. The ALJ summarized Dr. Wingate’s  
7 conclusions and discounted them to the extent that she described limitations more severe than  
8 moderate, finding such an opinion to be inconsistent with Plaintiff’s normal mental status  
9 examinations, normal interaction with providers, ability to follow interviews, cooperative  
10 attitude, linear stream of mental activity, and normal orientation Tr. 245. The ALJ also noted  
11 Dr. Wingate found Plaintiff would have “difficulty” with various tasks, but did not rate the  
12 extent of the difficulty. *Id.* The ALJ further found Dr. Wingate’s opinion Plaintiff would need a  
13 “quiet” work setting to be unexplained and unsupported. *Id.* Lastly, the ALJ found Dr.  
14 Wingate’s opinion as to Plaintiff’s social and concentration deficits to be inconsistent with  
15 Plaintiff’s self-report in agency forms, wherein she described no problem getting along with  
16 other people, and claimed to have enough concentration ability to watch television and play  
17 cards. *Id.* (citing Tr. 546-47).

18 Plaintiff acknowledges she reported an ability to watch a movie, but contends this does  
19 not necessarily mean she has sufficient concentration to complete work tasks. Dkt. 14 at 12.  
20 Even if this evidence could have been interpreted another way, Plaintiff has not shown the ALJ’s  
21 interpretation is unreasonable, and thus has not shown error in the ALJ’s inference. *See Sample*  
22 *v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982) (“Where evidence is susceptible of more than  
23

1 one rational interpretation, it is the ALJ's conclusion which must be upheld. In reaching his  
2 findings, the law judge is entitled to draw inferences logically flowing from the evidence.”).

3 Plaintiff also argues the objective medical evidence supports Dr. Wingate's opinion (Dkt.  
4 14 at 12), but again, Plaintiff's summary of the record is selective. Plaintiff does not  
5 acknowledge the extensive neurocognitive testing performed subsequent to Dr. Wingate's  
6 evaluation showed “the vast majority of [Plaintiff's] neurocognitive scores are either improved  
7 or remain stably within normal limits, including verbal learning and memory, visual memory,  
8 visuospatial skills, language abilities and most other aspects of attention, concentration and  
9 executive functioning.” Tr. 1010-11. In light of this and other normal testing cited by the ALJ,  
10 the ALJ did not err in discounting Dr. Wingate's opinion as inconsistent with the record. *See*  
11 *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (not improper to reject an opinion  
12 presenting inconsistencies between the opinion and the medical record). Plaintiff has not met her  
13 burden to show error in the ALJ's rationale.

14 **B. Plaintiff's testimony**

15 The ALJ discounted Plaintiff's testimony, finding (1) her alleged cardiovascular  
16 limitations to be inconsistent with the medical record showing improvement with treatment, (2)  
17 her alleged degenerative disc disease limitations to be inconsistent with the lack of treatment for  
18 that condition, and (3) her alleged mental limitations to be inconsistent with evidence of  
19 unremarkable mental status examinations and her infrequent report of symptoms. Tr. 241-44.

20 Plaintiff challenges the ALJ's assessment of her mental limitations, specifically  
21 contending the evidence showed she needed reminders. Dkt. 14 at 14. As evidence to support  
22 her need for reminders, Plaintiff cites Dr. Parker's description of Plaintiff's slow pace as to  
23 stream of the thought and speech, Drs. Berger and Linton's noting of imaging abnormalities and

1 documentation of Plaintiff's memory problems, and Dr. Wingate's findings with regard to  
2 Plaintiff's borderline processing speed index and delayed memory performance. *Id.* (citing Tr.  
3 873, 810, 962-63). As explained *supra*, however, the ALJ did not err in discounting the opinions  
4 of Drs. Parker, Berger, Linton, and Wingate, and thus that discredited evidence does not  
5 establish error in the ALJ's assessment of Plaintiff's subjective allegations.

6 **C. Lay statements**

7 Plaintiff submitted several lay statements (Tr. 598-610) describing her physical and  
8 mental limitations, which the ALJ summarized and discounted as inconsistent with the medical  
9 evidence and evidence of Plaintiff's functioning. Tr. 246-48.

10 As above, Plaintiff contends the ALJ erred in discounting the lay statements regarding  
11 Plaintiff's need for reminders. Dkt. 14 at 12-13. Plaintiff again relies on the opinions of Drs.  
12 Parker, Berger, Linton, and Wingate as evidence that corroborates, rather than contradicts, the  
13 lay statements. *Id.* But, as explained *supra*, the ALJ did not err in discounting those opinions,  
14 and cited Plaintiff's good performance on mental status examinations as evidence that  
15 contradicts the lay statements. Tr. 246-48. This is a germane reason to discount the lay  
16 statements, and thus Plaintiff has not shown error in the ALJ's assessment of the lay evidence.  
17 *See Lewis v. Apfel*, 236 F.3d 503, 511-12 (9th Cir. 2001) (germane reasons for discounting lay  
18 testimony included inconsistency with medical evidence, evidence of claimant's activities, and  
19 claimant's reports).

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1 **CONCLUSION**

2 For the foregoing reasons, the Commissioner's decision is **AFFIRMED** and this case is  
3 **DISMISSED** with prejudice.

4 DATED this 31<sup>st</sup> day of October, 2019.

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6   
7 BRIAN A. TSUCHIDA  
United States Magistrate Judge